

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],

Claimant

Reg. No: 2009-6740

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 21, 2009

Eaton County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on January 21, 2009. Claimant was represented by [REDACTED]

ISSUE

Whether claimant has established disability for Medical Assistance (MA).

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) July 3, 2008, claimant applied for MA and retroactive MA.
- (2) August 12, 2008, the Medical Review Team (MRT) denied claimant's application.

Department Exhibit A.

- (3) August 19, 2008, the department sent claimant written notice that the application was denied. Department Exhibit C.

(4) November 14, 2008, the department received claimant's timely request for hearing.

(5) December 23, 2008, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) January 21, 2009, the in-person hearing was held. Prior to the close of the record, claimant requested the record be left open for additional medical evidence. Claimant waived the right to a timely hearing decision. May 5, 2009, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 5-5-09.

(7) Claimant asserts disability based on impairments caused by diabetes, thyroid disease, anemia, stroke, BVD, and heart disease.

(8) Claimant testified at hearing. Claimant is 41 years old, 5'4" tall, and weighs 147 pounds. Claimant completed ninth grade, a GED, and a three month training course in computer operation. Claimant is able to read, write, and perform basic math. Claimant has never had a driver's license. Claimant cares for her needs at home.

(9) Claimant's past relevant employment has been as a cashier, janitor, and factory laborer.

(10) July 23, 2008, claimant presented to hospital due to difficulty breathing and being found unresponsive at home. Claimant was admitted and underwent objective medical testing and physical exam that revealed respiratory failure, possible congestive heart failure, hypothyroidism secondary to noncompliance with medication; bilateral infiltrates, resolving; and type 2 diabetes. Claimant improved with treatment and was discharged to home on June 29, 2008. Department Exhibit A, pgs 16-18. July 1, 2008, claimant presented to hospital complaining of shortness of breath. Claimant reported that after her discharge two days prior, she

smoked 15 cigarettes, was not careful with the fluids, and had shortness of breath. Physical exams revealed claimant's heart to have regular rate and rhythm with soft systolic murmur. Positive S3. Lungs had faint crackles at the bases and decreased breath sounds. There was 2 to 3+ pitting edema to the knee but no upper or lower extremity weakness. Chest x-rays showed pulmonary edema. Echocardiogram ejection fraction of 80 percent. Claimant's hematocrit was 33. Doctor's assessment was that claimant's pulmonary edema was most likely secondary to a diastolic function. Echocardiogram showed normal left ventricular function. Doctor's started claimant on medications to address these issues. Department Exhibit A, pgs 29-35.

(11) October 17, 2008, claimant presented to hospital complaining of shortness of breath. Chest x-rays showed evidence of bilateral interstitial infiltrates secondary to pulmonary edema. Claimant was treated with diuretics and improved significantly. Arterial doppler conducted on October 23, 2008, revealed moderate to severe limitation in arterial flow in the right upper extremity but patient had no evidence of acute symptoms such as claudication, pain, and both hands were warm on examination, and her pulses appear equal but weak bilaterally. Patient showed significant improvement during hospital stay. Hematocrit was 29.1 on admission. Claimant was started on supplements and five days later hematocrit was 25.5. Claimant was discharged on October 24, 2008. Claimant Exhibit A, pgs 16-17.

(12) December 4, 2008, claimant's pulmonary physician completed a Medical Examination Report (DHS-49) following exam on same date. Doctor states claimant has congestive heart failure. Classification of Patients with Diseases of the Heart (FIA 1138) indicates claimant must markedly limit physical activity. Claimant Exhibit A, pgs 1-3.

(13) January 9, 2009, claimant was admitted to hospital after complaining of being lightheaded. Physical exam revealed patient to be alert, comfortable, and in no acute distress. Heart had regular rate and rhythm without any murmurs, S1 S2, no S3, no S4. Lungs were bilaterally clear to auscultation without wheezing, crackles, or rhonchi. Abdomen was soft, non tender, non distended, with positive bowel sounds and no rebound or guarding. Extremities had no edema or calf tenderness and no cyanosis. Cranial nerves 2-12 were grossly intact. No sensory or motor deficits were found; no focal findings. Claimant was found to be anemic and was transfused two units of packed blood cells. Hematocrit was 19.2. Claimant Exhibit A, pgs 18-24. Claimant was discharged that same date. Claimant Exhibit A, pgs 16-24.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social

functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work)... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record establishes that claimant has been treated for anemia, acute congestive heart failure (CHF), respiratory failure, peripheral vascular disease, hypertension, and diabetes type 2. With treatment, claimant's conditions improved. However, claimant's pulmonary physician indicates claimant's CHF is severe and requires marked restriction of physical activity. Finding of Fact 10-13.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been as a cashier, janitor, and in factory work. See discussion at Step 2 above. Finding of Fact 10-13.

At Step 4, the objective medical evidence of record is sufficient to establish that claimant has functional impairments that prevent claimant, for a period of 12 months or more, from engaging in a full range of duties required by claimant's past relevant employment. Therefore, claimant is not disqualified from receiving disability at Step 4.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same

meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, see discussion at Step 2 above. Finding of Fact 10-13.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform less than sedentary work duties. Therefore, claimant is disabled and is not disqualified from receiving disability at Step 5.

Claimant meets the federal statutory requirements to qualify for disability. Therefore, claimant does meet the disability requirements to qualify for Medical Assistance based on disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has established disability for medical assistance.

Accordingly, the Department's action is, hereby, REVERSED. The department is to initiate a determination of claimant's financial eligibility for MA consistent with department policy and this Decision and Order. If otherwise eligible, medical review is set for January 2012.

/s/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 10, 2010

Date Mailed: December 13, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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